

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 205 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?

No.

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SATENDRASINGH BABUSINGH RAJPUT

Versus

STATE OF GUJARAT

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Appearance:

MR DIVYESH SEJPAL for appellant.

MR SP DAVE, A.P.P. for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 15/04/98

ORAL JUDGEMENT

1. By consent this appeal is taken up for final hearing and disposal today itself, treating the same as having been admitted.

2. The appellant herein, the accused no. 1 Satendrasingh Babusingh Rajput in Sessions Case No. 107 of 1997 came to be convicted of the offence punishable u/s 457 of the Indian Penal Code (IPC for short) and sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs.5000/- i/d to undergo simple imprisonment for a period of six months along with three other accused namely; (i) Vijaysing Natthusing Yadav, (ii) Hanumansing Jitbahadursing Rajput and (iii) Rajbirsing alias Langado Bansilal Yadav, who have not been before this Court.

3. After some amount of submission on facts of the case and applicability of Section 457 of the IPC to such facts, Mr. D.C. Sejpal learned advocate appearing for the appellant focussed his attention on the question of sentence. He has submitted that bearing in mind the provisions contained in Section 457 of the IPC the sentence of four years imposed by the learned Additional Sessions Judge, District Kheda at Nadiad is very harsh and despite the facts of the prosecution case such harsh sentence was not warranted. Besides, the learned Additional Sessions Judge has also erred in not directing set off for the period during which the appellant was in jail pending the trial. In reply, learned A.P.P. has submitted that the accused persons had committed offence of lurking house trespass with a view to commit serious offence of robbery / dacoity in the temple of Lord Ranchhodrai ji near Kani j Patiya. They were armed with deadly weapons. Thus, according to his submission, the sentence imposed by the learned Additional Sessions Judge is quite adequate. He, however, frankly submitted that the learned Additional Sessions Judge appears to have omitted grant of set off for the period of detention undergone.

4. It appears from the impugned judgment of the learned Additional Sessions Judge that the present appellant in the company of other accused persons had committed offence of lurking house trespass in the temple of Lord Ranchhodrai ji and thereafter they are alleged to have indulged in attempting to commence illegal demand of the property with force. Accused Sushilsing Kattarsing was found to be armed with country "Tamancha" and two live cartridges, accused Hanumansing was also found to be in possession of "Tamancha" with two live cartridges and accused Rajbirsing was also found in possession of "Tamancha" with six cartridges. It also appears from the impugned judgment that accused Satendrasingh Babusingh Rajput i.e. the present appellant has not been alleged having been in possession of any deadly weapon. Thus,

bearing in mind the facts of the case as also offence punishable u/s 457 of the IPC, it would be just and proper to reduce substantive sentence from four years to three years in so far as the present appellant is concerned, while granting set off for the period during which he was in jail during the trial.

5. In the result, conviction of the present appellant as rendered by the learned Additional Sessions Judge under the impugned judgment dated 17-2-1998 shall remain confirmed. However, substantive sentence ordered by the learned Additional Sessions Judge namely rigorous imprisonment for a period of four years shall stand reduced to rigorous imprisonment for a period of three years with further direction that the period during which the appellant was in jail during pendency of the trial shall be given set off. Rest of the judgment of the learned Additional Sessions Judge shall stand confirmed.

6. In case, upon working of the sentence as aforesaid, the present appellant is required to be released forthwith he shall be so released if not required in any other case.

7. This appeal is accordingly partly allowed. D.S. permitted.

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